In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 220

MICHIGAN NATIONAL BANK, A NATIONAL BANKING ASSOCIATION, PETITIONER

v.

RAY M. GIDNEY, COMPTROLLER OF THE CURRENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The order of the District Court (R. 66–67) is not reported. The *per curiam* opinion of the Court of Appeals (Pet. App. B, 16–17) is not yet reported.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on April 5, 1956. The petition for a writ of certiorari was filed on June 29, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Under R. S. 5155 (as amended), 12 U. S. C. 36 (c), the right of a national banking association to

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establish and operate a branch bank is dependent upon whether such establishment and operation are authorized to state banks by the statute law of the state involved. Petitioner, a national bank with its main office in Lansing, Michigan, seeks to establish and operate an additional branch in Saginaw, Michigan. The first question presented is whether the establishment and operation of such a Saginaw branch would be authorized to state banks by the statute law of Michigan.

2. If question 1 is answered in the negative, the question presented is whether the state limitations on the establishment and operation of branch national banks, as incorporated by reference in 12 U. S. C. 36 (c), are avoided in this case by the fact that petitioner happened to be formed out of a consolidation with six other national banks.

STATUTES INVOLVED

Pertinent parts of the Michigan Financial Institutions Act and of the National Banking Act, as amended, 12 U. S. C. 21, *et seq.*, are set forth in the Appendix, *infra*, pp. 15–19.

STATEMENT

Petitioner is a national banking association organized and existing under the laws of the United States with its principal office in Lansing, Ingham County, Michigan (R. 2). Prior to January 1, 1941, petitioner operated in Lansing under the name of Lansing National Bank (R. 2). Effective January 1, 1941, the Lansing National Bank consolidated with the Saginaw National Bank and five other national

banks in the State of Michigan (R. 3). Since the consolidation, petitioner has operated in Lansing under the charter of the Lansing National Bank and under the name of Michigan National Bank (R. 3). The Saginaw National Bank and the five other consolidated banks have, since 1941, been operated as branch offices in six Michigan cities (R. 3). See footnote 8, *infra*, p. 13.[1]

In July 1946, petitioner, through its president, H. J. Stoddard, requested that the Comptroller of the Currency give written clarification of the reasons why the Michigan National Bank could not establish additional branch offices in the several communities, other than Lansing, where it maintained branch offices (R. 25–26). Petitioner was advised in reply that the further expansion of branching operations was precluded by Michigan and federal law (R. 26–27).

By letter dated September 6, 1950, petitioner sought permission from the Comptroller to establish and operate a second branch office in Saginaw, Michigan (R. 27–32). Permission was in effect denied through a letter from the Deputy Comptroller, dated September 20, 1950 (R. 32–33). Permission was similarly sought in petitioner's letter of September 22, 1950 (R. 33–34), and again denied by the Deputy Comptroller's reply of October 6, 1950 (R. 35–36).

[1] In addition to the Saginaw branch, petitioner maintains twelve branch offices, including two in Battle Creek, one in Flint, one in Grand Rapids, three offices in Lansing, one office in Marshall, and four in Port Huron (R. 10–11, 38–39). Pursuant to R. S. 5155, as amended, 12 U. S. C. 36 (b), App., *infra*, pp. 17–18, a branch of the consolidated Saginaw National Bank and three branches of the consolidated Grand Rapids bank were discontinued in 1941 following the consolidation (R. 9, 25, 29, 32–33). (*See* fn. 7, *infra*, p. 12.)

In June 1953, petitioner renewed its request for permission to establish additional branches in the cities where it maintained branch banking offices (R. 37–38). On January 5, the Comptroller again advised that the proposed establishment of a second branch office at Saginaw would not be legally permissible under Michigan law (R. 45–46). And on July 14, 1954, petitioner was further informed by the Comptroller that he could not approve the establishment of a second branch of the Michigan National Bank in Saginaw because, under Michigan law as adopted by reference in the National Bank Act and as interpreted by the Comptroller's counsel, the General Counsel of the Treasury Department, and the Attorney General of the State of Michigan, the establishment of an additional bank in Saginaw was not legally permissible (R. 53–54).

On July 23, 1954, by complaint filed in the United States District Court (R. 2–8), petitioner sought a declaration that the Comptroller of the Currency was not precluded by Michigan law from considering petitioner's application to establish and operate a branch office in Saginaw (R. 7–8). On cross motions for summary judgment, the District Court denied petitioner's motion and granted that of the Comptroller (R. 66–67).

The Court of Appeals, *per curiam*, affirmed, holding that the Comptroller's refusal to approve the establishment of a second branch bank in Saginaw by petitioner was based upon a proper construction of Section 34 of the Michigan Financial Institutions Act, which, under Michigan law, governs branching

rights of state banks and which, under 12 U. S. C. 36 (c), is determinative of the branching rights of a national banking association (Pet. App. B, 16–17).

ARGUMENT

1. In its pertinent part, R. S. 5155, as amended, 12 U. S. C. 36 (App., *infra*, pp. 17–19) provides as follows:

> The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:
>
> * * * * *
>
> (c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, *if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question;* and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question *by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.* * * * [Emphasis added.]

Thus, as a national banking association in Lansing, Michigan, petitioner's authority to establish and operate a new branch office in Saginaw is, under federal law, dependent upon the statute law of Michigan relating to branching activities by state banks. In considering the propriety of respondent's refusal to

authorize a second branch bank in Saginaw, the Court of Appeals therefore looked to Section 34 of the Michigan Financial Institutions Act (App. *infra*, pp. 15–16) which prescribes the conditions and limitations for the establishment and operation of branch banks by state banking institutions. On the basis of its construction of that statute, the court below held that a state bank, in petitioner's circumstances, could not under Michigan law establish and operate the additional Saginaw branch which petitioner sought to have approved by respondent.

The construction given the state statute by the court is a reasonable one; it is in accord with the expressed opinion of the Attorney General of Michigan (R. 40–41; see *infra*, p. 9) and conforms to the interpretation and practice of the State Banking Department of the State of Michigan (R. 56–59; see *infra*, p. 9). Involving, as it does, primarily a question of a state law, the case is of only local application and of limited importance; further review by this Court therefore appears unwarranted.[2]

In any event, the Court of Appeals' construction of the state law is correct. Section 34 of the Michigan Financial Institutions Act (App., *infra*, pp. 15–16) discloses an obvious legislative purpose to restrict nar-

[2] Since the disposition of the case ultimately calls for the construction and application of the state statute without benefit of an authoritative pronouncement by the state courts, any decision in this case by a federal court will be clouded with uncertainty until the statute has been authoritatively construed by the Supreme Court of Michigan. For this additional reason the petition for a writ of certiorari should be denied. See *Federation of Labor* v. *McAdory*, 325 U. S. 450, 462, 471.

rowly the branching operations of state banks in cities other than the city where the bank is chartered to do a banking business. The initial paragraph of Section 34 permits the establishment and operation of a branch or branches within a village or city *other* than that in which the bank is originally chartered, only if (App., *infra*, p. 15):

> * * * [t]he village or city in which it is proposed to establish and operate a branch is located in the same county in which the parent bank has its principal office or, if not in said county, then within 25 miles of said parent bank or in a contiguous county at a point more than 25 miles from the parent bank, if such county has no bank: *Provided further,* That no such branch shall be established in a city or village in which a state or national bank or branch thereof is then in operation: *Provided further,* That the commission shall not grant such approval unless the parent bank has capital and surplus in an amount at least equal to the aggregate minimum capital and surplus, respectively, required for the establishment of a bank in each of the various places where such bank and its branches are to be located and unless the commission is satisfied as to the sufficiency of the capital and surplus of the bank, the necessity for the establishment of such branch or branches and the prospects of successful operation if established.

Petitioner has never suggested that the proposed Saginaw branch qualifies under these conditions and limitations imposed by the Michigan legislature. To avoid the geographical limitations of this first para-

graph of Section 34, which clearly preclude the establishment of the Saginaw branch,[3] resort is had to the second paragraph of Section 34 (App. *infra,* pp. 15–16) which declares:

> Any bank may * * * establish and operate a branch or branches within the limits of the city or village in which said bank is located: * * *

Petitioner contends that, because it now maintains a branch in Saginaw, it is "located" in that city within the meaning of the Michigan statute and may establish additional branches there, without regard to the limitations in the first paragraph of Section 34. It must follow that, if petitioner is "located" in Saginaw for branching purposes, it is also "located" in each of the five other cities in which it maintains branches.[4] While petitioner proposes at this time to establish only an additional Saginaw branch, it is clear that its construction of the state statute, if upheld, would lead to a wholesale avoidance of the geographical limitations which the state has imposed upon the establishment and operation of state branch banks in a city or village other than that in which the bank is chartered.

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[3] Neither Saginaw, nor the other cities where petitioner maintains branch offices, is in the same county in which the parent bank is located; none is within 25 miles of Lansing and none is in a county contiguous to Ingham County in which Lansing is situated.

[4] The second paragraph of Section 34 of the Michigan Act refers, in terms, to "*the city or village* in which said bank is located." The legislative use of the singular, "city or village," is, of itself, a denial of petitioner's premise that a bank, for branching purposes, may have more than one location. Petitioner's view, of course, would require that "the city or village" be read as "the cities or villages" in which the bank is located.

The Court of Appeals' interpretation of Section 34 of the Michigan Act fully accords with that of the state authorities. The State Banking Department of Michigan has advised that, in administering Section 34, it has adhered to the following interpretation (R. 57):

> 1. The place (community) where a bank is "located" is construed to mean the city or village in which its main office is located, and does not include any other city or village in which a branch or branches of the bank may be located. The main office of a bank is construed to be the "parent" bank for the purpose of determining whether the establishment of a branch may be authorized.

And, in the opinion of the State Attorney General, rendered in December, 1953, the phrase—"in which said bank is located"—in Section 34, "must be construed to mean only in the place where its [a bank's] main office is located and cannot be extended to mean the limits of every city or village in which a bank or a branch thereof may be presently located" (R. 40–45 at 43).[5]

The views and long-standing interpretation of state law by these state authorities are based upon a familiarity with state law and an intimate understanding of the legislative background and policy underlying

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[5] An interpretation of a state statute by an interested administrative agency, concurred in by the state attorney general, is accorded particular deference by the Supreme Court of Michigan. *People* v. *Robinson*, 241 Mich. 497, 217 N. W. 902. Unless clearly erroneous, like respect should be accorded in a federal court. *Badger* v. *Hoidale*, 88 F. 2d 208, 211 (C. A. 8).

Section 34.[6] It would require a far greater showing than petitioner could make to impel a Federal court to pronounce a contrary interpretation which, in the teeth of the policy of 12 U. S. C. 36 (c), would effectively create branching rights in a national bank unavailable to a state bank in like circumstances. Cf. *Federation of Labor* v. *McAdory*, 325 U. S. 450; *Alabama Comm'n* v. *Southern R. Co.*, 341 U. S. 341; *Burford* v. *Sun Oil Co.*, 319 U. S. 315; *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144; *Gauley Mountain Coal Co.* v. *Director of the United States Bureau of Mines*, 224 F. 2d 887 (C. A. 4).

2. While petitioner does predicate its right to establish a Saginaw branch upon Section 34 of the Michigan Act (Pet. 12), in the alternative it urges that under 12 U. S. C. 34a (App., *infra*, pp. 16–17) a right to establish a branch bank in Saginaw, free of the conditions and limitations of Section 34 of the Michigan Act, flows from the 1941 consolidation of the Saginaw National Bank with petitioner's predecessor in name, the Lansing National Bank (*supra*, pp. 2–3). Though this point was briefed and argued in the Court of Appeals, the court, in its *per curiam* opinion, apparently considered it unnecessary to discuss it and affirmed the order of the District Court stating that "the Court having further concluded, as a matter of law, that no branch banking rights flow from the

[6] The legislative history of Section 34, as well as prior legislation on the subject of branch banking in Michigan, has been compiled by the State Attorney General's Office and appears at pages 59–65 of the printed record. This history fully bears out the judicial and administrative interpretation of the present Michigan law.

consolidation with the Saginaw National Bank because branches may be established only upon the conditions prescribed by Section 36 of Title 12 of the United States Code" (Pet. App. A, 15). With the courts below, we submit that this contention, pressed with particular emphasis in this Court (Pet. pp. 5–13) but never before made by a national bank seeking branching privileges, is meritless.

Section 33, 12 U. S. C. (App., *infra*, p. 16), authorizes the consolidation of any two or more national banking associations; it was pursuant to this authority that the 1941 consolidation involving petitioner was consummated. Section 34a of Title 12 similarly authorizes the consolidation of a state bank with a national bank, and then goes on to provide that:

> * * * Upon such a consolidation, * * * the corporate existence of each of the constituent banks and national banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and *the consolidated association shall be deemed to be the same corporation as each of the constituent institutions.* All of the rights, franchises, and interests of each of such constituent banks and national banking associations in and to *every species of property, real, personal, and mixed, and choses in action thereto belonging,* shall be deemed to be transferred to and vested in such consolidated national banking association without any deed or other transfer; *and such consolidated national banking association, by virtue of such consolidation and without any order or other action on the part of any court or otherwise,*

> *shall hold and enjoy the same and all rights of property, franchises, and interests,* including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics and in every other fiduciary capacity, *in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such constituent institution at the time of such consolidation:* * * * [Emphasis added.]

From this general language in Section 34a, petitioner infers that, by virtue of the 1941 consolidation, the parent bank located in Lansing inherited and now retains all branching rights that its constituents had at the time of consolidation in 1941.

But as we have previously pointed out and as held by the court below, the retention, establishment, and operation of branches by national banks are specifically and comprehensively covered by another section of the statute, 12 U. S. C. 36. Thus, Section 36 (b) (App., *infra,* p. 18) deals particularly with branch banks of a constituent bank involved in a consolidation and, in effect, permits the consolidated association to *retain* and operate branches of a constituent bank only if they were in lawful operation on February 25, 1927.[7] And, with respect to the establishment

[7] The petitioner closed a branch in Saginaw (and three branches in Grand Rapids) upon consolidation, in 1941, in accordance with requirements of 12 U. S. C. 36 (b). Although the right to *retain* this branch of the Saginaw Bank admittedly did not survive the consolidation of 1941, petitioner now argues that the right of the

of a *new* branch, 12 U. S. C. 36 (c) (App., *infra*, pp. 18–19), by incorporating state law, discloses an unmistakable purpose on the part of Congress to equate the branching privileges of a national bank, whether consolidated or not, with those of a state bank similarly situated.[8] In contrast to the specific and detailed provisions of Section 36, Section 34a on which petitioner relies is silent on the particular subject of the establishment and operation of branch banks by a consolidated national bank. The general words in Section 34a which petitioner stresses must be read together with the precise and particular provisions which Section 36 contains with respect to branching. Nothing in the history of Section 34a lends support to petitioner's view that Congress intended, by its general clauses relating to consolidation, that additional branching privileges should accrue to a consolidated national bank which are not available to other national or state banks, and such a construction would plainly run counter to the indisputable policy

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Saginaw National Bank, not to *retain* an established branch but to open a *new* branch, survived the consolidation. Such reasoning is difficult to follow because, if 12 U. S. C. 36 (b) (relating to *retention* of banks established prior to February 25, 1927) is admittedly applicable, 12 U. S. C. 36 (c) (relating to the establishment of *new* branches) likewise should be applicable.

[8] Pursuant to 12 U. S. C. 36 (c) and Sec. 114 of the Michigan Financial Institutions Act (17 Mich. Stat. Ann., § 23.867, App. *infra*, p. 16 (prior to its 1945 amendment), petitioner was permitted, in 1941, to establish and operate branch banks in the six cities (other than Lansing) in which its constituent banks did business. 39 Op. A. G. 469; *Rushton* v. *Michigan National Bank*, 298 Mich. 417, 299 N. W. 129.

of Section 36 to place the branching rights of national and state banks on a par.[9]

CONCLUSION

For the foregoing reasons, we respectfully submit that the petition for a writ of certiorari should be denied.

OSCAR H. DAVIS,
Acting Solicitor General.
GEORGE COCHRAN DOUB,
Assistant Attorney General.
PAUL A. SWEENEY,
JOHN G. LAUGHLIN,
Attorneys.

JULY 1956.

[9] In Michigan, petitioner's construction of Section 34a would permit it to indulge in a practically unlimited network of branching, since (on its view) petitioner could consolidate with other banks throughout the State and then claim the right to use the branching rights of those new constituent banks. State banks in Michigan could not adopt such a procedure; see Secs. 34 and 114 of the Michigan Financial Institutions Act, App. *infra*, pp. 15–16.

APPENDIX

1. Section 34 of the Michigan Financial Institutions Act (17 Mich. Stat. Ann. § 23.762) provides as follows:

> Any bank having a capital of at least $50,000.00 may, with the written approval of the commission, establish and operate a branch or branches within a village or city other than that in which it was originally chartered: *Provided*, That the village or city in which it is proposed to establish and operate a branch is located in the same county in which the parent bank has its principal office or, if not in said county, then within 25 miles of said parent bank or in a contiguous county at a point more than 25 miles from the parent bank, if such county has no bank: *Provided further*, That no such branch shall be established in a city or village in which a state or national bank or branch thereof is then in operation: *Provided further*, That the commission shall not grant such approval unless the parent bank has capital and surplus in an amount at least equal to the aggregate minimum capital and surplus, respectively, required for the establishment of a bank in each of the various places where such bank and its branches are to be located and and unless the commission is satisfied as to the sufficiency of the capital and surplus of the bank, the necessity for the establishment of such branch or branches and the prospects of successful operation if established.
>
> Any bank may, with the written approval of the commission, establish and operate a branch or branches within the limits of the city or village in which said bank is located: *Provided*, That the commission is satisfied as to the neces-

> sity for the establishment of such branch and the prospects of successful operation if established. No branch of any such bank shall be moved from 1 location to another within the same city or village without the written approval of the commission.

Section 114 of the Michigan Financial Institutions Act (17 Mich. Stat. Ann. § 23.867) provides, in part, as follows:

* * * * *

> Subject to the requirements, restrictions and limitations of section 34 of this act, any consolidated bank resulting from the consolidation of two or more state banks or any one or more banks or trust companies, as provided for in section one hundred four of this act, and any state bank or national banking association which purchases the assets of a state bank, as provided for in section one hundred twelve of this act, may, with the written permission of the commission, establish and operate as a branch or branches the consolidating trust company, bank or banks or any bank which sells its assets to another state bank or national banking association, as provided in section one hundred twelve of this act.

2. Pertinent provisions of the National Bank Act, as amended, 12 U. S. C. 21, *et seq.*, provide as follows:

> § 33. Any two or more national banking associations located within the same State, county, city, town, or village may, with the approval of the Comptroller of the Currency, consolidate into one association under the charter of either existing banks, * * *.
>
> § 34a. Any bank incorporated under the laws of any State, or any bank incorporated in the District of Columbia, may be consolidated with a national banking association located in the same State, county, city, town, or village under the charter of such national banking associa-

tion * * *. Upon such a consolidation, * * * the corporate existence of each of the constituent banks and national banking associations participating in such consolidation shall be merged into and continued in the consolidated national banking association and the consolidated association shall be deemed to be the same corporation as each of the constituent institutions. All the rights, franchises, and interests of each of such constituent banks and national banking associations in and to every species of property, real, personal, and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such consolidated national banking association without any deed or other transfer; and such consolidated national banking association, by virtue of such consolidation and without any order or other action on the part of any court or otherwise, shall hold and enjoy the same and all rights of property, franchises, and interests, including appointments, designations, and nominations and all other rights and interests as trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics and in every other fiduciary capacity, in the same manner and to the same extent as such rights, franchises, and interests were held or enjoyed by any such constituent institution at the time of such consolidation: * * *.

§ 36. [R. S. § 5155, as amended]. The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may retain and operate such branch or branches as it may have had in lawful operation on February 25, 1927, and any national banking association which continuously maintained and operated not more than one branch for a period of more than twenty-five years immediately preceding

February 25, 1927, may continue to maintain and operate such branch.

(b) If a State bank is after February 25, 1927, converted into or consolidated with a national banking association, or if two or more national banking associations are consolidated, such converted or consolidated association may, with respect to any of such banks, retain and operate any of their branches which may have been in lawful operation by any bank on February 25, 1927.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks and drafts, and doing business incident thereto:

Provided, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock.

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